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8 Leslie Klein

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

LESLIE KLEIN,

Debtor.

Case No.: 2:23-bk-10990-SK

Chapter 11

**DEBTOR'S OPPOSITION TO
MENLO'S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY
(ACTION IN NONBANKRUPTCY
FORUM); DECLARATION OF
MICHAEL JAY BERGER IN
SUPPORT THEREOF**

Date: May 17, 2023
Time: 8:30 a.m.
Place: Courtroom 1575
Court United States Bankruptcy
255 East Temple Street
Los Angeles, CA 90012

TO THE HONORABLE SANDRA R. KLEIN, JUDGE OF THE UNITED
STATES BANKRUPTCY COURT, TO THE UNITED STATES TRUSTEE AND
TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

Movant Franklin H. Menlo's, co-trustee of the Franklin Menlo Irrevocable Trust
Establish March 1, 1983 ("Movant") *second* Motion for Relief from Stay (the
"Motion") should be denied as Movant has not sustained its burden to establish "cause"
for relief from the stay under 11 U.S.C. § 362. The Motion seeks to lift the stay so that
Movant may proceed with its State Court action against Debtor Leslie Klein ("Debtor"),

1 filed in the Superior Court of California, entitled In the Matter of The Franklin Menlo
2 Irrevocable Trust established March 1, 1983, Case Number BP136769 (the “State Court
3 Action” or the “Menlo Action”).

4 Preliminarily, despite the Debtor giving Notice of Stay of the Bankruptcy
5 Proceeding to all parties in the State Court Action, Movant has continued to pursue its
6 claims against the Debtor in the State Court, and on April 24, 2023, Judge Luna in the
7 State Court entered an Order adopting the referee’s August 29, 2022 Report &
8 Recommendation. A true and correct copy of Debtor’s Notice of Stay of Proceedings in
9 the State Court Action is attached to the Declaration of Michael Jay Berger as Exhibit
10 “1.” A true and correct copy of the *postpetition* Order adopting the referee’s August
11 29, 2022 Report & Recommendation is attached to the Declaration of Michael Jay
12 Berger as Exhibit “2.” A true and correct copy of the docket from the State Court
13 Action after the filing of Debtor’s bankruptcy case is attached to the Declaration of
14 Michael Jay Berger as Exhibit “3.” Judge Luna appears to be disregarding the
15 automatic stay, and is not only continuing to enter Orders, but is setting hearings in the
16 State Court Action. The April 24, 2023 Order is in violation of the automatic stay, and
17 Debtor asks this Court to find that the postpetition Order is void.
18

19 Movant’s Motion for Relief should be denied on the basis that granting relief
20 from stay is not in the best interest of all the creditors of the estate. Debtor will have to
21 engage special litigation counsel to pay for Debtor’s defense in the Menlo Action. The
22 special litigation counsel’s fees will become an Administrative Claim in the Debtor’s
23 Chapter 11 bankruptcy case. The Debtor is insolvent and Debtor’s limited financial
24 means would be best used to fund a Plan of Reorganization to repay his creditors.
25 Wherefore, Debtor asks this Court to deny Movant’s Motion for Relief.
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1 **III. ARGUMENT AND APPLICABLE LEGAL AUTHORITY**

2 **A. *Motion for Relief Should be Denied As Debtor's Case Was Not Filed in Bad***
3 ***Faith and the Curtis Factors Do Not Favor Lifting the Automatic Stay***

4 A creditor may move for relief from automatic stay under 11 U.S.C. § 362(d),
5 which provides that a bankruptcy court "shall grant relief from the stay" upon a showing
6 of "cause." *Id.* "Cause" is determined on a case-by-case basis. *Id; In re Tucson*, 912 F.2d
7 1162, 1166 (9th Cir. 1990).

8 "To determine bad faith a bankruptcy judge must review the 'totality of the
9 circumstances'" and "should ask whether the debtor 'misrepresented facts in his
10 [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his
11 Chapter 13 [petition or] plan in an inequitable manner.'" *In re Eisen*, 14 F.3d 469, 470
12 (9th Cir. 1994). "Determining whether the debtor's filing for relief is in good faith
13 depends largely on the bankruptcy court's on-the-spot evaluation of the debtor's
14 financial condition, motives, and the local financial realities." *In re Oasis at Wild Horse*
15 *Ranch, LLC*, No. BAP AZ-11-1142-DKIMY, 2011 WL 4502102, at *10 (B.A.P. 9th
16 Cir. Aug. 26, 2011).

17 Menlo is one of many creditors in Debtor's bankruptcy case. Debtor has fully
18 disclosed all of his debts and liabilities in his bankruptcy case, and filed this Chapter 11
19 to reorganize his debts and pay his creditors. The Debtor's Chapter 11 case was not filed
20 in bad faith.

21 In *Curtis*, a Utah district court identified twelve factors courts should consider in
22 deciding whether there is "cause" to lift an automatic stay:

23 (1) Whether the relief will result in a partial or complete resolution of the issues;
24 (2) The lack of any connection with or interference with the bankruptcy case;
25 (3) Whether the foreign proceeding involves the debtor as a fiduciary;
26 (4) Whether a specialized tribunal has been established to hear the particular
27 cause of action and whether that tribunal has the expertise to hear such cases;

- 1 (5) Whether the debtor's insurance carrier has assumed full financial
- 2 responsibility for defending the litigation;
- 3 (6) Whether the action essentially involves third parties, and the debtor functions
- 4 only as a bailee or conduit for the goods or proceeds in question;
- 5 (7) Whether the litigation in another forum would prejudice the interests of other
- 6 creditors, the creditor's committee and other interested parties;
- 7 (8) Whether the judgment claim arising from the foreign action is subject to
- 8 equitable subordination;
- 9 (9) Whether movant's success in the foreign proceeding would result in a judicial
- 10 lien avoidable by the debtor under Section 522(f);
- 11 (10) The interests of judicial economy and the expeditious and economical
- 12 determination of litigation for the parties;
- 13 (11) Whether the foreign proceedings have progressed to the point where the
- 14 parties are prepared for trial, and
- 15 (12) The impact of the stay and the "balance of hurt."

16 *Curtis*, 40 B.R. at 799-800; *see also In re Plumberex Specialty Prods., Inc.*, 311 B.R.
17 551, 559 (Bankr. C.D. Cal. 2004) (adopting *Curtis* factors and recognizing courts in
18 other circuits that have done the same).

19 The Ninth Circuit has recognized that "the *Curtis* factors are appropriate,
20 nonexclusive, factors to consider in deciding whether to grant relief from the automatic
21 stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R.
22 915, 921 (9th Cir. BAP 2009). However, while the *Curtis* factors are widely used to
23 determine the existence of "cause," not all of the factors are relevant in every case, nor
24 is a court required to give each factor equal weight. *Plumberex*, 311 B.R. at 560. In fact,
25 some cases regarding automatic stay do not mention *Curtis* at all. *See In re Conejo*
26 *Enterprises, Inc.*, 96 F.3d 346, 353 (9th Cir. 1996) (affirming bankruptcy court's denial
27 of relief from automatic stay without discussing *Curtis* factors. As the *Curtis* court
28

1 noted, "The most important factor in determining whether to grant relief from the
2 automatic stay to permit litigation against the debtor in another forum is the effect of
3 such litigation on the administration of the estate. Even slight interference with the
4 administration may be enough to preclude relief in the absence of a commensurate
5 benefit." 40 B.R. at 800.

6 In addition, the party seeking to lift the automatic stay has the burden of
7 establishing a *prima facie* case that "cause" exists for relief under § 362(d)(1). *Id.* If
8 "cause" is established, "the burden shifts to the debtor to show that relief from the stay
9 is unwarranted." *Id.*

10 Here, Movant fails to make the requisite showing of the cause under the Curtis
11 Factors.

12 i. *Curtis Factor #1 - Relief Will Not Result in a Complete Resolution of the*
13 *Issues*

14 The State Court will make a complete resolution of the issues. Therefore, Curtis
15 Factor #1 is in favor of the Movant.

16 ii. *Curtis Factor #2 – Substantial Interference with the Bankruptcy Case*

17 Relief from stay would undoubtedly interfere with Debtor's bankruptcy case.
18 The Debtor would need to employ special litigation counsel to continue to litigate the
19 case. The Debtor's cost of continuing the Menlo Action would be significant and would
20 be an Administrative Claim that would take away from the funds available to pay the
21 creditors of the estate. Based on the forgoing, Curtis Factor #2 is in favor of the Debtor
22 and against the Movant.

23 iii. *Curtis Factor #3 – The Foreign Proceeding Does Not Involve the Debtor as a*
24 *Fiduciary*

25 The State Court Action does involve the Debtor as a fiduciary. Therefore, Curtis
26 Factor #3 is in favor of the Movant.

iv. *Curtis Factor #4 – No Specialized Tribunal is Required To Hear The State Court Action*

There is no specialized tribunal established to hear Movant's claim. Therefore, Curtis Factor #4 is in favor of the Debtor and against the Movant.

v. Curtis Factor #5 – There is No Insurance Carrier Defending Debtor

There is no insurance carrier defending Debtor from Movant's claim. As such, Debtor would be using its own resources to defend itself against Movant should relief from stay be granted. The Debtor's attorneys fees will be an Administrative Claim in the case, and would take away from funds Debtor could use to pay his creditors.

Therefore, Curtis Factor #5 is in favor of the Debtor and against the Movant.

vi. Curtis Factor #6 – Whether the Action Essentially Involves Third Parties, and the Debtor Functions Only As a Bailee or Conduit for the Goods or Proceeds in Question

This factor does not apply as Debtor was not a bailee or conduit for goods or proceeds in question. .

vii. *Curtis Factor #7 - Whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties*

This Curtis factor also weighs in favor of the Debtor and against the Movant. Granting relief from stay would prejudice the other creditors of the estate as the Debtor's funds would be used to defend the Debtor in the Menlo Action. It is in the best interest of all the creditors of the estate for Debtor's funds to be used to fund the Plan of Reorganization and not for continued litigation with Movant. Therefore, Curtis Factor #7 is in favor of the Debtor and against the Movant.

viii. Curtis Factor #8 – Whether the Judgment Claim Arising from the Foreign Action is Subject to Equitable Subordination

This factor is not applicable in this case.

1 *ix. Curtis Factor #9 – Whether movant's success in the foreign proceeding would*
2 *result in a judicial lien avoidable by the debtor under Section 522(f)*

3 This factor is not applicable in this case.

4 *x. Curtis Factor #10 – The Interests of Judicial Economy and the Expedited*
5 *and Economical Determination of Litigation for the Parties*

6 Permitting litigation against Debtor to proceed in the very forum that drove the
7 Debtor into bankruptcy in the first place would seriously impede and possibly prevent
8 reorganization in the bankruptcy proceeding. Again, the cost of litigation would be an
9 Administrative Claim and that money is best used to pay the creditors of the estate
10 through Debtor's Plan. Therefore, Curtis Factor #10 is in favor of the Debtor and
11 against the Movant.

12 *xi. Curtis Factor #11 – Whether the Foreign Proceedings Have Progressed To*
13 *the Point Where the Parties Are Prepared for Trial*

14 The proceedings in the State Court Action have progressed to the point where a
15 final determination of the issues is imminent. Therefore, Curtis Factor #11 is in favor of
16 the Movant.

17 *xii. Curtis Factor #12 – The Impact of the Stay and the “Balance of Hurt”*

18 When considering relief from automatic stay, the bankruptcy court must consider
19 the interests of the debtor and the bankruptcy proceeding in addition to the interests of
20 the creditors. As noted in *In re Martha Washington Hosp.*, 157 B.R. 392, 395 (N.D. Ill.
21 1993), "It is not enough for the creditor to merely show that it will be hurt by the
22 continuation of the stay, rather the creditor must show that neither the debtor nor the
23 other creditors will be injured if the stay is lifted." The "most important factor,"
24 however, "is the effect of such litigation on the administration of the estate." *Curtis*, 40
25 B.R. at 800.

26 Here, clearly the harm to the Debtor and the creditors of the estate, outweighs
27 any conceivable benefit to Movant should the stay be lifted. Moreover, there is real no

1 benefit to Movant in granting its Motion as Movant can file its Proof of Claim and the
2 parties can litigate the claim the proper venue, the bankruptcy court. Therefore, Curtis
3 Factor #12 is in favor of the Debtor and against the Movant.

4 **Conclusion Re: Curtis Factors**

5 The automatic stay enables the debtor to avoid the multiplicity of claims against
6 the estate arising in different forums. *In re Larkham*, 31 B.R. 273, 276, 10 B.C.D. 1093
7 (Bkrtcy.D.Vt. 1983). Stated differently, the policy underlying the automatic stay is to
8 protect the debtor's estate from "the chaos and wasteful depletion resulting from
9 multifold, uncoordinated and possibly conflicting litigation." *In re Frigitemp. Corp.*, 8
10 B.R. 284, 289 (S.D.N.Y. 1981). The Section 362 automatic stay gives the bankruptcy
11 court an opportunity to harmonize the interests of both debtor and creditors while
12 preserving the debtor's assets for repayment and reorganization of his or her obligations.
13 See *In re Fidelity Mortgage Investors*, 550 F.2d 47, 55 (2nd Cir. 1976), cert. denied,
14 429 U.S. 1093, 97 S.Ct. 1107, 51 L.Ed.2d 540 (1977). Under Chapter 11, the stay is also
15 intended to give the debtor time to reorganize his assets in order to rehabilitate his
16 business. Weintraub, *Bankruptcy Law Manual* ¶ 8.10 at 8-19 (1980). For the foregoing
17 reasons, the Curtis factors weigh in favor of the Debtor and against the Movant. As
18 such, Movant has not sustained its burden to establish "cause" for relief from the stay
19 under 11 U.S.C. § 362. Accordingly, Movant's Motion for Relief from Stay should be
20 denied.

22 **IV. CONCLUSION**

23 Debtor Leslie Klein respectfully requests that this Court:

24 (1) Deny Movant's Motion for Relief from the Automatic Stay on the basis that
25 granting relief is not in the best interest of the creditors of the estate;
26 (2) Make a determination that the April 24, 2023 Order entered in the State Court
27 Action is void; and

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1 (3) For any other relief deemed necessary and proper.
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7 LAW OFFICES OF MICHAEL JAY BERGER
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Dated: May 3, 2023

By: /s/ Michael Jay Berger
Michael Jay Berger
Proposed Counsel for Leslie Klein

DECLARATION OF MICHAEL JAY BERGER

I, Michael Jay Berger, declare and state as follows:

1. I am an Attorney at Law, licensed to practice before all of the courts in the State of California, and in the United States District Court for the Central District of California. I have personal knowledge of the facts set forth below and if called to testify as to those facts, I could and would competently do so.

2. On April 13, 2023, my firm gave Notice of Stay of the Bankruptcy Proceeding to all parties in the State Court Action. A true and correct copy of Debtor's Notice of Stay of Proceedings in the State Court Action is attached hereto as Exhibit "1."

3. Upon review of the State Court docket, it appears that on April 24, 2023, Judge Luna entered an Order in the State Court adopting the referee's August 29, 2022 Report & Recommendation. A true and correct copy of the *postpetition* Order adopting the referee's August 29, 2022 Report & Recommendation is attached to the Declaration of Michael Jay Berger as Exhibit "2." A true and correct copy of the docket from the State Court Action after the filing of Debtor's bankruptcy case is attached to the Declaration of Michael Jay Berger as Exhibit "3."

4. Judge Luna appears to be disregarding the automatic stay, and is not only continuing to enter Orders, but is setting hearings in the Menlo State Court Action. The April 24, 2023 Order is in violation of the automatic stay, and is void.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on May 3, 2023, at Los Angeles, California.

/s/ Michael Jay Berger
Michael Jay Berger

EXHIBIT 1

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Michael Jay Berger (SBN 100291) Law Offices of Michael Jay Berger 9454 Wilshire Blvd., 6th FL. Beverly Hills, CA 90212</p> <p>TELEPHONE NO.: (310) 271-6223 FAX NO. (Optional) (310) 271-9805 E-MAIL ADDRESS (Optional) michael.berger@bankruptcypower.com ATTORNEY FOR (Name) Leslie Klein</p>	FOR COURT USE ONLY
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: 111 N. Hill St. CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Court</p>	
<p>PLAINTIFF/PETITIONER: MENLO, FRANKLIN HENRY IRREVOCABLE TRUST DEFENDANT/RESPONDENT: LESLIE KLEIN</p>	<p>CASE NUMBER: BP136769</p> <p>JUDGE: DEPT: Probate Department 3</p>
NOTICE OF STAY OF PROCEEDINGS	

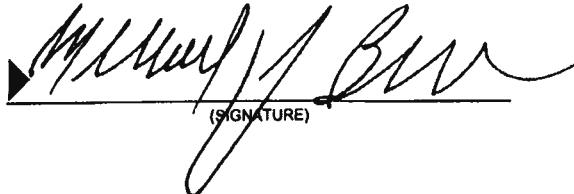
To the court and to all parties:

1. Declarant (name): Michael Jay Berger
 - a. is the party the attorney for the party who requested or caused the stay.
 - b. is the plaintiff or petitioner the attorney for the plaintiff or petitioner. The party who requested the stay has not appeared in this case or is not subject to the jurisdiction of this court.
2. This case is stayed as follows:
 - a. With regard to all parties.
 - b. With regard to the following parties (specify by name and party designation): LESLIE KLEIN
3. Reason for the stay:
 - a. Automatic stay caused by a filing in another court. (Attach a copy of the Notice of Commencement of Case, the bankruptcy petition, or other document showing that the stay is in effect, and showing the court, case number, debtor, and petitioners.)
 - b. Order of a federal court or of a higher California court. (Attach a copy of the court order.)
 - c. Contractual arbitration under Code of Civil Procedure section 1281.4. (Attach a copy of the order directing arbitration.)
 - d. Arbitration of attorney fees and costs under Business and Professions Code section 6201. (Attach a copy of the client's request for arbitration showing filing and service.)
 - e. Other:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4/13/2023

Michael Jay Berger
(TYPE OR PRINT NAME OF DECLARANT)



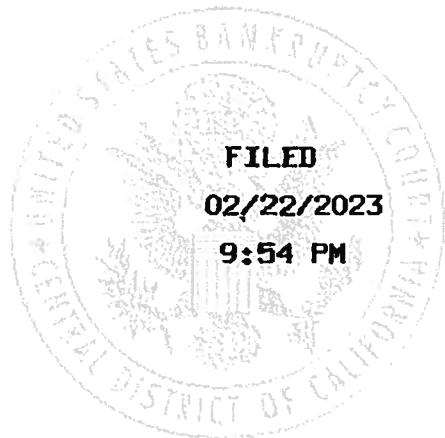
(SIGNATURE)

United States Bankruptcy Court
Central District of California

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 02/22/2023 at 9:54 PM and filed on 02/22/2023.

Leslie Klein
322 N. June Street
Los Angeles, CA 90001
SSN / ITIN: xxx-xx-6944



FILED
02/22/2023
9:54 PM

The case was filed by the debtor's attorney: The bankruptcy trustee is:

Michael Jay Berger 9454 Wilshire Blvd 6th Fl Beverly Hills, CA 90212-2929 310-271-6223	Mark M Sharf (TR) 6080 Center Drive #600 Los Angeles, CA 90045 818-961-7170
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The case was assigned case number 2:23-bk-10990-SK to Judge Sandra R. Klein.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page www.cacb.uscourts.gov or at the Clerk's Office, 255 East Temple Street, Los Angeles, CA 90012.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Kathleen J. Campbell
Clerk, U.S. Bankruptcy Court

PACER Service Center			
Transaction Receipt			
04/13/2023 13:14:31			
PACER Login:	MichaelBerger	Client Code:	
Description:	Notice of Filing	Search Criteria:	2:23-bk-10990-SK
Billable Pages:	1	Cost:	0.10

PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
2

3 A am employed in the County of Los Angeles, State of California. I am over the age of
4 18 and not a party to the within action; my business address is: Law Offices of Michael Jay Berger,
5 9454 Wilshire Blvd., 6th Floor, Beverly Hills, CA 90212

6 On, 4/13/2023, I served the foregoing documents described as **NOTICE OF STAY**
7 **PROCEEDINGS** on interested parties in this action by placing a true copy thereof enclosed in a
8 sealed envelope addressed as follows:

9 **BY ELECTRONIC MAIL:** Electronic Delivery pursuant to the parties' agreement

10 **XXX (BY MAIL)** By placing such a true copy of the foregoing document(s) in a sealed envelope
11 addressed as set forth on the attached mailing list. I Placed such envelope for collection and
12 mailing following ordinary business practices. I am readily familiar with this Firm's practice for
13 collection and processing of correspondence for mailing. Under that practice, the correspondence
14 would be deposited with the United States Postal Service on that same day, with postage thereon
15 fully prepaid at Beverly Hills, California, in the ordinary course of business.

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17 Saltzman Donald Lawrence
18 601 W 5th St Lobby
19 Los Angeles, CA 90071

20 Streisand Adam Frederick
21 Sheppard Mullin Richter & Hampton LLC
22 1901 Avenue of the Stars Suite 1600
23 Los Angeles, CA 90067

24 Wachtell Michael Lawrence
25 Buchalter, a Professional Corporation
26 1000 Wilshire Blvd, Suite 1500
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28 Weingarten Alex M
29 Willkie Farr & Gallagher, LLP
30 2029 Century Park E Ste 3400
31 Los Angeles, CA 90067-3020

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34 Executed on 4/13/2023. At Beverly Hills, California.

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37 Peter Garza
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EXHIBIT 2

FILED
Superior Court of California
County of Los Angeles

APR 24 2023

David W. Staylor, Executive Officer/Clerk of Court
By: S. Miramontes, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IN THE MATTER OF
THE FRANKLIN HENRY MENLO
IRREVOCABLE TRUST
ESTABLISHED
MARCH 1, 1983

AND CONSOLIDATED MENLO
FAMILY TRUST CASES

Case No.: BP136769¹

**NOTICE OF RULING RE: REPORT
AND RECOMMENDATION OF THE
COURT-APPOINTED REFEREE ON
EXAMINATION AND
ADJUDICATION OF THE TRUSTEE'S
FIRST, SECOND AND THIRD
ACCOUNTINGS ON EACH OF THE
TWENTY-FOUR TRUSTS AT ISSUE
FOR THE TRUST PERIODS
SEPTEMBER 10, 1996-JUNE 30, 2013,
JULY 1, 2013-DECEMBER 31, 2016
AND JANUARY 1, 2017-SEPTEMBER
30, 2018 [Code Civ. Proc. §639 & 643]**

**NOTICE OF COURT'S TENTATIVE
STATEMENT OF DECISION BASED
ON REPORT AND
RECOMMENDATION OF THE
COURT-APPOINTED REFEREE**

ORDERS THEREON

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¹ Consolidated with LASC Case Nos BP139977; BP139978; BP139999; BP140000; BP140001; BP140002;
BP140003; BP140004; BP140005; BP140007; BP140008; BP140009; BP140010; BP140011; BP140012;
BP140013; BP140014; BP140015; BP140016; BP140017; BP140018; BP140019; BP140020; and BP154676.

1 PROCEDURAL BACKGROUND

2 On September 15, 2021, an order appointing Judge Glen Reiser (Ret.) as a referee
3 pursuant to C.C.P. Section 639 was made as to three separate accountings filed as to 24 separate
4 trust actions. The pertinent part of this order, based on the Objections and Replies received as to
5 the Referee's Report, are as follows:

6 "1. The Referee shall hold separate trials, to consider all factual and legal issues raised by
7 the parties in connection with the Trustee's three separate acts of accountings, with
8 certain exceptions, as further discussed and ordered below....
9
10 3. The Referee shall hold a separate trial for the review of each set of the Trustee's
11 Accountings (e.g., the trial on the Trustee's First Accountings shall be conducted separate
12 from the trial on the Trustee's Second Accountings). Except as stated below, each
13 separate trial shall include any surcharge issues resulting from the review of the
14 Accountings at issue.
15
16 4. Respondent Les Klein and Associates, Inc. shall be included as a respondent in all trial
17 hearings. During the course of the trials on Trustee's accountings, the Referee shall also
18 determine all issues raised in the Amendments to Petitions against Respondent Les Klein
19 and Associates, Inc., including but not limited to all Probate Code Section 850 and 859
20 issues and all other damages mentioned in Petition's Fifth Amended Petition, except the
21 cause of action for Removal of Trustee. Referee to designate breach cause of action for
22 damages what the relief is...
23
24 6. Certain issues shall be excepted from the scope of trial by Referee and shall be
25 reserved for the Trial Court, as follows: (i) surcharge of Trustee for professional fees, and
26 (ii) liability of Trustee for prejudgment interest. These issues shall be addressed and
27 determined by the Trial Court in a separate hearing following the trials by Referee. This
28 separate hearing be conducted as a second phase of the trials on the accountings at issue,
rather than as a completely separate trial..."

Ret. Judge Reiser submitted his 86 page report and recommendation to the court on
August 29, 2022.

On September 16, 2022, the court heard two Ex Parte Petitions, one filed by the Winters
beneficiaries and the other by Franklin Menlo (together with all other trust beneficiaries whose

1 matters were the subject of the Referee's Report other than the Winters family) seeking removal
2 of Leslie Klein (hereafter referred to as Klein) as trustee in the 24 trust actions. At the
3 conclusion of that hearing, the court suspended Leslie Klein as trustee and appointed Franklin
4 Menlo and Jeffrey Winter as interim successor co-trustees. It should be noted that subsequent to
5 the filing of the Referee's Report, approximately 55 more trust petitions have been filed by other
6 Menlo family trust beneficiaries.

7 At this same hearing, the court set forth a briefing schedule for written objections and
8 reply to objections as to the Referee's Report and continued the two Ex Parte Petitions, as well
9 as all other matters on calendar on September 16, 2022 to January 12, 2023. The court did not
10 direct that any formal motion to adopt the Referee's Report be filed.

11 On January 12, 2023, the court heard argument from all counsel as to its tentative ruling
12 (provided to counsel via email prior to the hearing) as to adoption of the Referee's Report.
13 Following argument, the court indicated it would issue its ruling after re-reviewing two specific
14 objections raised by Klein, to wit: (i) whether PC 859 damages against Klein as an individual
15 were properly part of the reference order; and (ii) whether the Referee properly handled the
16 attorney-client objection made by Klein's counsel as to testimony given by Petitioners (24 trust
17 beneficiaries) forensic economic expert (Duross O'Bryan). The accountings and other pending
18 matters were continued to March 15, 2023.

19 On February 23, 2023, another attorney employed by Klein (as to issues separate from
20 the accounting and removal petitions) filed a notice of stay based on Klein filing for bankruptcy
21 (case number 2:23-bk-10990).

22 On March 15, 2023, the court advised counsel that it would be issuing a ruling as to the
23 Referee's Report as (i) the issue had, in essence, been submitted to the court for decision on
24 January 12, 2023; and (ii) Petitioners would not be in a position to submit claims in the
25 bankruptcy proceeding without knowledge as to whether they had any such claims and, if so, the
26 amount(s) as to each beneficiary. Based on a last minute filing on March 13, 2023 by Klein's
27 attorney (Nunan), the court did not issue its ruling because it needed clarification as to whether
28 this filing was a request by Klein to reopen argument as to the Referee's Report and, if so, to
afford Petitioners an opportunity to respond. Attorney Nunan clarified that he was not seeking to
reopen argument and, accordingly, counsel for Petitioners (Saltzman and Weingarten) indicated
that they did not feel the need to respond to the same.

1 The court has received and read the Referee's Report in its entirety no less than seven
2 times between September 15, 2022 and April 24, 2023.

3 The court has read and considered the Objections (32 pages) filed on November 4, 2022
4 by suspended trustee, Leslie Klein (hereafter referred to as Klein). The court has referred to the
5 three submitted appendices (604 pages total) and compendium of transcript (127 pages) as
6 needed to assess the assertions made in the Objections.

7 The court has read and considered the Opposition (56 pages) filed on December 22, 2022
8 by the Menlo family trust participants (except the Winter family).

9 The court has read and considered the Response (40 pages) and Declaration of Attorney
10 Weingarten (154 pages) filed on December 22, 2022 by the Winter family.

11 The court has read and considered the Supplemental Brief Re 859 Damages (16 pages)
12 filed on January 13, 2023 by the Winter family.

13 The court has read and considered the Supplemental Declaration by Terence Nunan re
14 Objections to Referee's Report (545 pages) filed on March 13, 2023 only as to the transcript of
15 the proceedings held on January 12, 2023 so as to refresh the court's recollection of the
16 arguments of all counsel to the Referee's Report.

17 ANALYSIS OF OBJECTIONS

18 A. The Referee made incorrect factual findings

19 Klein alleges five incorrect factual findings. As to the first (other than Norine, Klein
20 has failed to distribute any portion of trust principal), Klein has taken one part of the
21 total sentence his allegation. Looking at the entirety of the sentence, it is clear that
22 the Referee found that the Menlo beneficiaries' requests for distribution of the
23 principal in their respective trusts was not done despite orders from the trial court
24 which were affirmed on appeal. The trust documents provided for distribution at
25 various milestone ages to the beneficiaries and, other than distributions to beneficiary
26 Norine Winter, no such distribution was made by Klein. Further, the Referee had the
27 opportunity to hear the testimony and noted in footnote 4 that Klein said he never had
28 any intention to distribute the trust principal according to the terms of the individual
 trust documents; and that he had drafted some of the later trusts. The court defers to

the Referee's observation of the witnesses' testimony and demeanor in the giving of the same. *In Re Avena* (1996), 12 Cal. 4th 694, 710

The second alleged incorrect finding, even if true, is inconsequential to the overall findings made by the Referee (Mr. Lowi was not designated as Klein's expert and/or witnesss). Mr. Lowi appears to have been called by the Petitioner/Beneficiaries to impeach Klein's testimony as to commissions received by him on the sale of new insurance policies to the Menlo Trusts (Klein testified he had not received commissions and Lowi testified Klein had received \$326,023.78 in commissions).

As to the third alleged incorrect finding as to Klein's medical status, it is clear that the Referee, at the start of the 22 day evidentiary hearing, was open to the possibility that Klein's ability to recollect events was attributable to age and/or some loss of cognition. The Referee's assessment of Klein's ability to recall facts/details at the start of the trial was quite different from the Referee's conclusion as to Klein's credibility at the conclusion of the trial. In short, after hearing from all the witnesses, the Referee found Klein to be untruthful rather than befuddled.

As to the fourth alleged incorrect finding that Klein should be removed as a trustee, again Klein does not fully cite the entire footnote wherein the Referee makes clear that Klein's removal remains an issue to be decided by the trial judge.

As to the fifth alleged incorrect finding (Sam Menlo's incapacity as of 2002), the Compendium of Transcripts filed with the court only goes up to the March 29, 2022 hearing date and ends with page 4118. Even if the portion of the transcript cited in the Objections was available, the Reply filed by the non-Winter family beneficiaries make clear that there was ample testimony given to the Referee as to Sam Menlo's health issues and the effects on Sam's competence. This finding is not significant to the Referee's ultimate findings as to the mismanagement and looting of the Menlo Trusts by Klein.

This objection is overruled.

27
28 B. The Referee should have excluded evidence offered by Menlo family beneficiaries
for failure to comply with pre-trial rules and/or Referee orders

1
2 The Referee's Report addresses Klein's lament as to the Menlo Family's ongoing
3 modifications to its exhibit list. Given the fact that this litigation was ten years in the
4 making before the evidentiary hearing by Ret. Judge Reiser and involved just over
5 three weeks of hearing time conducted in a span of four months, fourteen lay and
6 expert witnesses and hundreds, if not thousands, of exhibits, it is no surprise that any
7 party's exhibit list would "float" as characterized in the Referee's Report. The
8 overall tenor of the report is that Klein and his counsel were offered opportunities to
9 address their concerns about late filings including the opportunity to submit a reply
10 brief to the Menlo beneficiaries' closing brief. The report also makes clear that there
11 was no sabotage of Klein as documents not included on the Menlo Family's witness
12 list were shared and/or viewed by Klein's counsel prior to trial.

13 **This objection is overruled.**

14
15 **C. The testimony of the Menlo Beneficiaries' forensic expert's (O'Bryan) is**
16 **inadmissible**

17 Klein alleges that the expert testimony of Duross O'Bryan (forensic accountant who
18 testified for the Menlo beneficiaries) should be excluded because he relied on
19 information which was protected by the attorney-client and/or work product privilege.
20 It appears that this dispute has been litigated in pre-trial proceedings (see March 12,
21 2019 order). It also appears that this issue was flagged for consideration by Ret.
22 Judge Reiser, briefed and ruled upon. That Klein is raising this as an objection is
23 perplexing since his requested exclusion order was granted. The Referee's Report
24 reflects that witnesses were admonished not to disclose any privileged information.
25 As to Mr. O'Bryan, the Referee wrote that while privileged materials produced in
26 discovery per court order were delivered to his office, he never reviewed the same in
27 making his calculations or formulating his opinions. Insofar as the conclusions
reached by the Referee were based on "sanitized" evidence relied upon by Mr.
O'Bryan as to his testimony, there is no reason to strike the same.

1 Klein also alleges that O'Bryan's expert testimony relied on inadmissible, case-
2 specific hearsay in violation of *People v. Sanchez*. Specifically, Klein contends that
3 records used by O'Bryan from Transamerica Life, Union Central/Ameritas, UBS and
4 Lincoln did not qualify as a business record exception to the hearsay rule. This issue
5 was raised by Klein in the evidentiary proceedings prompting the Referee to direct
6 the Menlo litigants to submit authentication of the business records upon which their
7 forensic expert was relying. Certifications were produced to the Referee's
8 satisfaction such that compliance with the business record exception was found. The
9 reasoning set forth in the Referee's Report is sound and grounded in well established
10 law.

11 **This objection is overruled.**

12 D. It was improper for the Referee to award pre-accounting damages

13 The September 15, 2021 reference order provided for the Referee to consider all
14 factual and legal issues raised by the parties. The Menlo beneficiaries have
15 consistently objected to Klein's designation of the commencement date as to his
16 trustee duties (which affects the First Accounting filed as to each trust) and, therefore,
17 was an issue within the scope of the reference order to be resolved by Ret. Judge
18 Reiser. The testimony of witnesses, including Klein himself, resulted in a finding that
19 he assumed the position of trustee on September 10, 1996 as to 22 of the 24 subject
20 trust matters; and that he assumed the trustee position as to the Daniel Winter trust in
21 1999 and did likewise as to the Jonathan Lifschutz trust in 2002. Part of the evidence
22 appears to be Klein's withdrawal of \$750,000 from Trust insurance policies in 2005
23 to pay himself trustee compensation for services rendered to some or all of the subject
24 trusts *prior* to the date(s) stated in each of the First Accountings.

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1 As to any improper citation to the CEB Fiduciary Accounting Handbook by the
2 Referee (if in fact true) is a de minimis error having no bearing on the overall
3 assessment of the evidence admitted and law relied upon by the Referee.

4
5 **This objection is overruled.**

6 E. Klein made a prudent decision by allowing the four Phoenix life insurance policies to
7 lapse

8 There was competing expert testimony as to whether Klein's decision to allow four
9 life insurance policies to lapse was a breach of his fiduciary duties as trustees.

10 Klein's objection points out testimony helpful to his position that was given by the
11 Menlo beneficiaries' expert, Steven Burgess. Klein's objections do not address the
12 evidence found to be true by the Referee, to wit, that Klein took loans from the four
13 subject policies which were not traced back to any benefit for any of the 24 trusts and
14 which were used by him. Klein's objections ignore the testimony of Mr. Burgess
15 regarding the fact that Sam Menlo was no longer insurable at the time the policies
16 were allowed to lapse. The Referee had ample evidence on which to calculate
17 damages against Klein for his imprudent conduct in causing the Phoenix life
18 insurance policies to lapse.

19
20 **This objection is overruled.**

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1 F. The Referee made an improper award of interest

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3 As to each accounting, the Referee carefully calculated the *interest obligations*
4 incurred by the Menlo trusts as a result of the mismanagement and/or theft of the
5 insurance policies which are direct losses incurred forming the basis for a damage
6 award. Any pre-judgment interest as to the base amount of damages is for the trial
7 court to determine.

8 **This objection is overruled.**

9
10 G. It was improper for the Referee to calculate and award PC 859 damages

11 The Order appointing Ret. Judge Reiser as referee specifically referenced that the
12 Fifth Amended Petition filed by the Menlo beneficiaries which resulted in Leslie
13 Klein and Associates being a named party to the litigation. Paragraph 28 of the Fifth
14 Amended Petition (filing date March 8, 2019) states as follows: "Nothing in this
15 Fifth Amendment to Petition shall be deemed to replace or supersede the claims
16 against Respondent Leslie Klein contained in the original Petition filed in this case."
17 The Fifth Amended Petition specifically prays for damages under *Probate Code*
18 Section 850. The original Petition filed on March 28, 2013 asks for surcharges
19 against Klein pursuant to *Probate Code* Sections 16420(a)(3), 16440 and other
20 relevant code sections. The original Petition also prayed for punitive damages based
21 on Klein's intentional, willful and malicious breaches of fiduciary duty. As to each
22 accounting, the Referee made findings, based on substantial evidence, of conduct by
23 Klein giving rise to enhanced monetary damages. While punitive damages are not
24 recognized in the law as remedy available as to the internal affairs of a trust, *Probate*
25 *Code* Section 859 does provide for additional damages against a trustee who has, in
26 bad faith, taken, concealed or disposed of assets belonging to a trust. The Referee
27 relied on Section 859 based on what he found to be egregious actions by Klein in the
28 handling of the various Menlo trusts. The Referee was scrupulous in carving out the
surcharge award regarding the Phoenix life insurance policies damages from any
calculation of double damages as to the accountings.

1 Klein does not contend that he was surprised at the claim for 859 damages or that he
2 had no notice of Petitioners' intent to request the same in the evidentiary hearing
3 conducted by the Referee. Klein has not shown that he raised this issue with Ret.
4 Judge Reiser or was deprived of a full and fair opportunity to defend against the claim
5 for damages above any surcharge amounts. Further, if there was uncertainty as to the
6 Referee considering such a claim for damages, Klein certainly could have petitioned
7 the trial court for clarification as to this aspect of the scope of the reference order
8 before the evidentiary hearing before the Referee commenced. To raise this objection
9 after the expenditure of attorneys' fees by both sides in the multi-day evidentiary
10 hearing before the Referee is (at best) a disingenuous and (at worst) desperate attempt
11 by Klein to bob and weave out of full financial accountability for his egregious
12 pilfering of the various trusts during his tenure as trustee. Given that the original
13 Petition asked for damages pursuant to other relevant sections of the Probate Code,
14 and the Fifth Amended Petition referenced Section 859, this court finds that the
15 calculation of 859 damages was properly and fully tried before the Referee pursuant
16 to the September 15, 2021 reference order; and the recommendations made by the
17 Referee as to these damages should be adopted.

18 **This objection is overruled.**

19 **H. The Referee improperly awarded attorney's fees**

20 The Referee's Report did not make an award of attorney's fees. The Referee made an
21 observation that the legal work expended by counsel for the Menlo beneficiaries
22 should result in an award of attorneys fees; and that any such award could be
23 apportioned among the beneficiaries based on a common fund or substantial benefit
24 analysis. The Referee clearly and properly left the issue of attorney's fees and costs
25 to the trial court for determination.

26 **This objection is overruled.**

27 //

1 I. Klein's request for reasonable trustee fees in the amount of \$259,391.65 should be
2 granted

3 Given the ample evidence supporting the various surcharge amounts detailed by the
4 Referee as to each of Klein's alleged accounting periods (and forgetting for the
5 moment the years for which he served as trustee without accounting for his
6 management of the subject trusts), there is no basis to make any award of trustee fees
7 to Klein. Based on more than ample evidence presented to the Referee, it would be
8 grossly unjust and set a terrible example as to acceptable trustee behavior to award
9 Klein any fees for (i) laundering funds through intra trust transactions and various
10 accounts resulting in 72 accountings that had to be teased out by a forensic accountant
11 hired by the beneficiaries; (ii) commingling of trust assets with other client accounts;
12 and (iii) using trust funds for personal use. *Butler v. LeBouef* (2016), 248 Cal. App.
13 4th 198, 213. The Referee specifically reserved the payment of Klein's attorney's fees
14 and costs as an offset against any surcharge as to each accounting.

15 **This objection is overruled except as to the consideration of any offsets to the**
16 **surcharge as determined by the trial court.**

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ORDERS

- 1) The Report and Recommendation of the Court-Appointed Referee on
2) Examination and Adjudication of the Trustee's First, Second and Third
3) Accountings on each of the Twenty-Four Trusts At Issue for the Trust Periods
4) September 10, 1996-June 20, 2013, July 1, 2013-December 31, 2016 and
5) January 1, 2017-September 30, 2018 submitted on August 29, 2022 is adopted
6) by the trial court without modification. The Report and Recommendation is
7) ordered filed forthwith and includes the court's signed order (Page 74).
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1) The trial court adopts the Report and Recommendation of the Court-
2) Appointed Referee as its Tentative Statement of Decision.
3) Clerk's Office to serve all counsel with a copy of this Order and Pages 1 and
4) 74 of the Referee' Report as counsel already have received a full copy of this
5) Report.

Dated: April 24, 2023


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ANA MARIA LUNA, Judge

EXHIBIT 3

FUTURE HEARINGS

[Case Information](#) | [Register Of Actions](#) | **FUTURE HEARINGS** | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

04/28/2023 at 1:30 PM in Probate Department 3 at 111 North Hill Street, Los Angeles, CA 90012
Order to Show Cause re: Contempt

04/28/2023 at 1:30 PM in Probate Department 3 at 111 North Hill Street, Los Angeles, CA 90012
Ex Parte Hearing

05/30/2023 at 1:30 PM in Probate Department 3 at 111 North Hill Street, Los Angeles, CA 90012
Order to Show Cause Hearing

05/30/2023 at 1:30 PM in Probate Department 3 at 111 North Hill Street, Los Angeles, CA 90012
Motion Hearing

PARTY INFORMATION

[Case Information](#) | [Register Of Actions](#) | **FUTURE HEARINGS** | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

D - K L - S W - W

DEUTSCH ABRAHAM YECHIEL - Petitioner

DEUTSCH DEBORAH MENLO - Petitioner

DEUTSCH ESTHER ROSE - Petitioner

DEUTSCH MORDECHAI - Petitioner

DEUTSCH RACHEL LEAH - Petitioner

DEUTSCH RAFAEL - Petitioner

DEUTSCH SAMUEL EPHRAIM - Petitioner

DEUTSCH ZEV YITZCHAK - Petitioner

FRANKEL ASHER - Petitioner

FRANKEL MOISHE - Petitioner

FRANKEL YESHIA - Petitioner

HAHN & HAHN LLP - Attorney for Respondent

HENLEY WILLIAM K. ESQ. - Attorney

HENLEY WILLIAM K. ESQ. - Attorney

HENLEY WILLIAM KENT - Attorney for Respondent for Respondent

HURON JEFFREY GLEN - Attorney for Interested Party

ISRAELI FAYE LIPSCHUTZ - Petitioner

KLEIN KENNETH KOLEV - Interested Party

KLEIN LESLIE - Appellant

KLEIN LESLIE - Trustee

KLEIN LESLIE - Respondent

DOCUMENTS FILED

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Documents Filed (Filing dates listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

02/16/2023 12/14/2022 10/18/2022 07/25/2022 03/21/2022 11/17/2021 08/25/2021 06/09/2021 04/27/2021
12/23/2020 04/16/2020 10/21/2019 05/15/2019 01/07/2019 10/09/2018 06/25/2018 07/10/2017 02/01/2017
11/08/2016 08/22/2016 04/12/2016 08/06/2015 12/02/2013

04/28/2023 Remote Appearance - Scheduled

Filed by Co - Trustee

04/28/2023 Remote Appearance - Scheduled

Filed by Co - Trustee

04/28/2023 Remote Appearance - Scheduled

Filed by Petitioner

04/27/2023 Order - Appointing Court Approved Reporter

Filed by Attorney

04/26/2023 Remote Appearance - Scheduled

Filed by Petitioner

04/26/2023 Remote Appearance - Scheduled

Filed by Petitioner

04/26/2023 Declaration (Supplemental Declaration of Donald L. Saltzman, 4/21/23)

Filed by Petitioner

04/26/2023 Remote Appearance - Scheduled

Filed by Petitioner

04/26/2023 Appeal - Notice of Non-Compliance (NOA 2/16/23)

04/26/2023 Remote Appearance - Scheduled

Filed by Petitioner

04/25/2023 Supplement (Supplement of Leslie Klein to Opposition to Ex Parte, 4/28/23)

Filed by Respondent

04/25/2023 Remote Appearance - Scheduled
Filed by Respondent

04/25/2023 Mail - Certificate of Mailing (NOTICE OF RULING FILED 4-24-2023)
Filed by Attorney

04/24/2023 Order (Adopting Judge Reiser's Report)
Filed by Court

04/24/2023 Notice - Ruling
Filed by Court

04/24/2023 Minute Order

04/21/2023 Minute Order

04/21/2023 Minute Order

04/21/2023 Minute Order

04/21/2023 Ex Parte - Order

04/20/2023 Remote Appearance - Scheduled
Filed by Petitioner

04/20/2023 Ex Parte - Petition (Order to Unfreeze and Allow Distribution of Unrelated AIG Insurance Policy)
Filed by Petitioner

04/13/2023 Notice (Notice of Stay (Comment))
Filed by Respondent

04/07/2023 Appeal - Ntc Designating Record of Appeal APP-003/010/103 (Appeal - Ntc Designating Record of Appeal APP-003/010/103)

Filed by Respondent

04/07/2023 Remote Appearance - Scheduled
Filed by Respondent

04/06/2023 Notice (Notice of Change of Attorney Information)
Filed by Respondent

04/05/2023 Miscellaneous Document (Recorded Notice of Withdrawal of Lis Pendens)
Filed by Interested Party

03/25/2023 Appeal - Notice of Default Issued (NOA 2/16/23)

03/20/2023 Brief (Supplemental Points and Authorities re Automatic Stay (11 USC 362))
Filed by Respondent

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Case Under Submission for Decision

Filed by Petitioner

03/15/2023 Minute Order

03/15/2023 Minute Order

03/15/2023 Order - Appointing Court Approved Reporter

Filed by Attorney

03/15/2023 Remote Appearance - Scheduled

Filed by Petitioner

03/13/2023 Declaration (Supplemental Declaration of Terence S. Nunan With Respect to Objections to Referee Report
(Declarations))

Filed by Trustee

03/09/2023 Opposition (to Request for Statement of Decision)

Filed by Petitioner

03/06/2023 Appeal - Superior Court Appeal Filing Fee Paid

Filed by Respondent

03/06/2023 Remote Appearance - Scheduled

Filed by Respondent

03/06/2023 Remote Appearance - Scheduled

Filed by Respondent

03/03/2023 Appeal - Notice of Filing of Notice of Appeal

03/02/2023 Remote Appearance - Scheduled

Filed by Respondent

02/23/2023 Notice (Notice of Stay of Proceedings)

Filed by Respondent

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

TOP 02/16/2023 12/14/2022 10/18/2022 07/25/2022 03/21/2022 11/17/2021 08/25/2021 06/09/2021 04/27/2021

12/23/2020 04/16/2020 10/21/2019 05/15/2019 01/07/2019 10/09/2018 06/25/2018 07/10/2017 02/01/2017

11/08/2016 08/22/2016 04/12/2016 08/06/2015 12/02/2013

02/16/2023 Appeal - Notice of Appeal/Cross Appeal Filed

Filed by Respondent

02/15/2023 Minute Order

02/15/2023 Order - Appointing Court Approved Reporter

Filed by Attorney

02/15/2023 Order (Right to Attach Order (AMENDED))

Filed by Attorney

02/14/2023 Reply (Reply to Opposition to Motion, 2/15/23)

Filed by Respondent

02/14/2023 Remote Appearance - Scheduled

Filed by Respondent

02/02/2023 Response (Response and Objection to Request for Statement of Decision)

Filed by Co - Trustee

02/02/2023 Miscellaneous Document (Arraignment On Order To Show Cause Re: Criminal Contempt)

Filed by Respondent

02/01/2023 Declaration (Declaration of Alex M. Weingarten I/S/O Jeffrey Winter Opposition to Motion to Expunge Lis Pendens and Attys Fees and Costs (w Exhibits 1-27))

Filed by Co - Trustee

02/01/2023 Opposition (Jeffrey Winter Opposition to Motion to Expunge Lis Pendens (CCP 405.30) and Attys Fees and Costs (CCP 405.38))

Filed by Co - Trustee

01/27/2023 Notice (Co-Trustee Jeffrey Winter's Notice of Non-Opposition to Application For OSC Re ContemptNotice)

Filed by Co - Trustee

01/24/2023 Writ - Attachment ((Leslie Klein, LA))

Filed by Co - Trustee

01/23/2023 Request (Request for Statement of Decision (Requests))

Filed by Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 9454 Wilshire Blvd., 6th FL., Beverly Hills, CA 90212

A true and correct copy of the foregoing document entitled (specify): **DEBTOR'S OPPOSITION TO MENLO'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY (ACTION IN NONBANKRUPTCY FORUM); DECLARATION OF MICHAEL JAY BERGER IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 5/3/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (date) 5/3/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served)**: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 5/3/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Sandra Klein
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1582 / Courtroom 1575
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

5/3/2023

Date

Peter Garza

Printed Name

/s/Peter Garza

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Goe Forsythe & Hodges: Reem J Bello rbello@goforlaw.com, kmurphy@goforlaw.com
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U.S. Trustee: Ron Maroko ron.maroko@usdoj.gov
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United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
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Interested Party: Paul P Young paul@cym.law, jaclyn@cym.law
Counsel for First Amendment Wendriger Family Trust dated May 7, 1990: Clarisse Young
youngshumaker@smcounsel.com, levern@smcounsel.com
Interested Party: Roye Zur rzur@elkinskalt.com,
cavila@elkinskalt.com; lwageman@elkinskalt.com; 1648609420@filings.docketbird.com

2. SERVED BY UNITED STATES MAIL:

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Subchapter V Trustee
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6080 Center Drive #600
Los Angeles, CA 90045

SECURED CREDITORS:

CCO Mortgage Corp.
Attn: Bankruptcy
10561 Telegraph Rd
Glen Allen, VA 23059

Chase Mortgage
BK Department
Mail Code LA4 5555
700 Kansas Ln
Monroe, LA 71203

Fay Servicing Llc
Attn: Bankruptcy Dept
Po Box 809441
Chicago, IL 60680

Mrc/united Wholesale M
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Dallas, TX 75261

Selene Finance
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Philadelphia, PA 19101

Shellpoint Mortgage Servicing
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Greenville, SC 29603

Toyota Financial Services
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Plano, TX 75025

Toyota Motor Credit Corp.
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Ericka and Joseph Vago
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Fiore Racobs & Powers
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Gestetner Charitable Remainder Trust
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1425 55th Street
Brooklyn, NY 11219

Los Angeles County Tax Collector
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PO Box 54110
Los Angeles, CA 90054-0027 (Address from POC)

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P. O. Box 619098
Dallas, TX 75261

Selene Finance
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Po Box 8619
Philadelphia, PA 19101

Shellpoint Mortgage Servicing
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Po Box 10826
Greenville, SC 29603

Toyota Financial Services
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Po Box 259001
Plano, TX 75025

Wilmington Savings Fund Society
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U.S. Bank Trust National Bank
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PO Box 814609
Dallas, TX 75381 (Address from POC)

U.S. Bank N.A.
c/o Nationstar Mortgage LLC
Attn: Bankruptcy Dept.
PO Box 619096
Dallas, TX 75261 (Address from POC)

JP Morgan Mortgage Acquisition
c/o NewRez LLC dba Shellpoint Mortgage Servicing
PO Box 10826
Greenville, SC 29603 (Address from POC)

Ajax Mortgage Loan Trust
c/o Gregory Funding LLC
PO Box 230579
Tigard, OR 97281 (Address from POC)

20 LARGEST UNSECURED CREDITORS AND INTERESTED PARTIES:

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Valley Village, CA 91607

Bank of America
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Tampa, FL 33634

Bank of America
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Barclays Bank Delaware
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Po Box 8801
Wilmington, DE 19899

California Bank & Trust
Po Box 711510
Santee, CA 92072

CCO Mortgage Corp.
Attn: Bankruptcy
10561 Telegraph Rd
Glen Allen, VA 23059

Chase Card Services
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Wilmington, DE 19850

Chase Card Services
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Chase Doe

143 S. Highland Drive
Los Angeles, CA 90036

Chase Mortgage
BK Department
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Monroe, LA 71203

Citibank
Attn: Bankruptcy
P.O. Box 790034
St Louis, MO 63179

Franklin H. Menlo Irrevocable Trust
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Attn: Alex M. Weingarten, Esq.
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Robert & Esther Mermelstein
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Franklin Menlo, Trustee
c/o Paul P. Young & Chora Young & Manassarian
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Pasadena, CA 91107 (Address from POC)

Jacob Rummitz
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Los Angeles, CA 90036

Jeffrey Siegel, Successor Trustee
of the Hubert Scott Trust
c/o Oldman, Cooley, Sallus
16133 Ventura Blvd., Penthouse Suit
Encino, CA 91436-2408

Leslie Klein & Associates, Inc.
c/o Parker Milliken
555 Flower Street
Los Angeles, CA 90071

Oldman, Cooley, and Sallus
16133 Ventura Blvd., Penthouse Suite
Encino, CA 91436-2408

Sandra Layton
161 N. Poinsettia Place
Los Angeles, CA 90036

First Amendment Wendriger Faimly Trust Dated May
7, 1990
c/o Clarisse Young Shumaker, Esq.
280 S. Beverly Dr. Ste. 505
Beverly Hills, CA 90212

Jeffry Siegel, Successor Trsutee
c/o Oldman, Cooley, Sallus
161133 Ventura Blvd., Penthouse Suite
Encino, CA 91436 (Address from POC)

Gestener Family Trust
Andor Gestetner
c/o Michael I. Gottfried
10345 W. Olympic Blvd.,
Los Angeles, CA 90064 (Address from POC)